

## Summary of Discussion

Combined Legislative-Governance Committee Meeting – April 18, 2002

Those present included:

Brent Walthall (Staff, Senator Costa); Mike Rippey; Bob Raab; Cindy Darling; Mary Selkirk; Julie Maclay; Dave Briggs; Robert Gonzales; Jim Pretti; Katy Foulkes; Jean Auer; Cynthia Koehler; Barry Nelson; Jennifer Krebs.

1. Welcome and introductions
2. Brent Walthall updated the group on SB 1653, and Senator Costa's efforts to move a bill through the legislature to authorize CALFED. Among the points discussed:
  - A broad coalition is needed to support the bill; the core of which is basic language provided by CALFED to the Senator
  - The governor has not yet indicated that he supports the bill
  - There are three main contentious issues: 1) Who will oversee CALFED. The bulk of the comments to date are over who should be on the governing board (including the Task Force which in a previous letter requested appointment of a member representing the Bay Area) 2) How CALFED will be integrated with other state agencies. 3) How CALFED will be integrated with other federal agencies.
  - Costa has been meeting with CA representatives in Washington DC about how to resolve contentious issues and get bills enacted.
  - Suggestions to task force on how to structure comments to Costa – focus on how to improve accountability and clarity of CALFED in legislation

Task force members then discussed how various governing boards are structured and what principles are important to members. Many people around the state want to have CALFED governed by stakeholders. Many agency officials want CALFED to be run by the agencies – a power sharing compromise is needed. Cynthia Koehler noted that joint state/federal appointments to a public commission with members with various areas of expertise (like the water board) who were required to treat stakeholder input (another committee) with “great weight” might be a compromise.

Members of the governance/legislative committee volunteered to have a conference call on 4/25 at 3:00 to discuss crafting a letter to Costa that included: 1) the Andy Moran comments already circulated 2) forthcoming information on governance from the Environmental Water Caucus to be provided by Cynthia Koehler 3) language promoting accountability and clarity 4) a position on the public advisory committee. People who will participate in the meeting are Cynthia Koehler, Mary Selkirk, Bob Raab, Jim Pretti, Dave Briggs, Robert Gonzales, Julie Maclay, Greg Zlotnick.

The progress on the letter will then be presented to the Task Force on April 29, 2002.

3. Initiative 940. Barry Nelson updated the group: the Costa bond SB 1710 will probably not move out of the Senate because initiative 940 has almost enough signatures to qualify for the ballot. The committee asked that members consider the initiative's contents within their local agencies – cities, counties, water districts - and that the task force take a position in July if there is a consensus position.
4. Federal CALFED authorization – The committee thanked Cindy Darling for her work on crafting draft letters to Feinstein/Boxer and Calvert that expressed support for the Feinstein/Boxer legislation and expressed support for Calvert's efforts to move a bill through the House to conference committee. Cynthia Koehler noted that Ellen Tauscher may be introducing legislation in the House that mimics Feinstein/Boxer and questioned the wisdom of sending a letter to Calvert that may be read as supportive of his current legislation (as opposed to supportive of a process to authorize CALFED). The letters will be distributed at the 4/29 task force meeting for discussion/input from the group.
5. Openings on task force. Jennifer Krebs noted that Steve Kinsey had to resign from the task force. This leaves only three supervisors – Mike Rippey, John Gioia, and Rose Jacobs-Gibson. Mike Rippey, Jean Auer, and Julia Maclay (with Greg Zlotnick) said they would make phone calls to try to find interested supervisors for the task force.

# **CALFED Governance Structure and Authorizing Legislation Environmental Water Caucus [WORKING DRAFT] March 2002**

## **I NEED FOR A CALFED GOVERNING STRUCTURE**

The CALFED Record of Decision (ROD) contains dozens of programs and thousands of actions. Most of these efforts are within the expertise and authority of existing state and federal agencies and can be implemented by them.

For example, DWR and the Army Corps will run the Delta Levees program. DWR and the Bureau of Reclamation will run the storage and conveyance programs. DWR, the Bureau and the National Resource Conservation Service (NRCS) will co-manage the water conservation program and the State Water Resources Control Board (SWRCB) and the Bureau will run the recycling program.

**Issue: Should CALFED be implemented by existing agencies, or is there is a need for a CALFED agency?** The CALFED Bay-Delta Program was established to develop the Programmatic Record of Decision and environmental impact review. Those tasks are complete. However, two primary reasons are often given for establishing a permanent CALFED agency:

1. The CALFED ROD establishes a 30-year program based on the idea of “balanced” implementation with many decisions reserved for the future. A governing structure is needed to oversee implementation, ensure balance and to craft joint decisions over the life of the program.
2. Over the last 6 years, the CALFED structure has successfully facilitated communication and coordination between federal and state agencies, and fisheries and water development agencies. These benefits will be equally important at the implementation level. A CALFED agency is needed to continue the coordination/facilitation role filled by the CALFED Bay-Delta Program to date.

**EWC Response: EWC believes that an oversight and coordinating body comprised of the current CALFED Policy Group members (more or less) is necessary and appropriate.** This is consistent with EWC policy positions over the last 4 years.

## **II NEED FOR AN ECOSYSTEM RESTORATION ENTITY**

The CALFED ROD includes a massive ecosystem restoration program. While it has been assumed that CALFED's water supply reliability programs will be implemented by existing water development agencies (DWR and the Bureau), it has not been assumed that the restoration program would be implemented by the existing natural resource agencies, California Department of Fish and Game, U.S. Fish and Wildlife Service, and National Marine Fisheries Service. Instead, it is proposed that the restoration program be managed by the CALFED Program staff. This would be the only program for which the CALFED entity would have line management responsibility.

**Issue: Should the Ecosystem Restoration Program be managed by CALFED or by an ecosystem restoration entity?** CALFED is a consortium of agencies with differing, even conflicting, mandates. While it is appropriate for a mixed group to oversee the greater program, the ecosystem program requires the same level of focus and expertise as the water development programs. Experience nationally demonstrates that it is critical for restoration programs to be managed by restoration entities.

**EWC Response: An entity with restoration expertise should have primary responsibility for the CALFED restoration program, either in the form of an existing natural resource agency or a new restoration entity run by a consortium of agencies with fisheries and natural resources authority.** (See EWC letter to L. Snow 3/8/98; EWC Letter to Policy Group Chairs 2/10/00).

## **III SHAPE OF THE OVERARCHING CALFED INSTITUTIONAL STRUCTURE**

The basic purposes of a CALFED institutional structure are:

1. Effective implementation of the program elements leading to achievement of program performance standards in all areas.
2. Establishing well-functioning relationships and clear roles as between the existing agencies and the CALFED entity.
3. Oversight of the program as a whole to ensure balance.
4. Coordination of all program elements to ensure efficiency and cooperation.
5. Ability to resolve disputes and reach joint decisions on programmatic matters.
6. Ensuring that linkages and assurances for all programs are enforced.

There are two basic models available to accomplish the goals above:

### **A. Power Sharing: Oversight and Coordinating Agency**

- CALFED entity oversees and continues the coordination and facilitation of communications among the implementing agencies that forged by the current CALFED Bay-Delta Program.

- Primary responsibility for achieving the performance standards lies with the implementing agencies, which would also have first level planning and budget responsibility.
- CALFED entity has approval authority over program budgets and can send back budget requests to implementing agencies for revision. To minimize abuses/politicization of this power, use of budget authority is constrained by criteria, and must be supported by substantial evidence. CALFED entity would also be empowered to resolve disputes among agencies. Once approved, funding would flow directly to implementing agencies. CALFED staff would perform ongoing coordination, liaison functions but would not have direct management responsibility for the program elements.

#### **B. CALFED Commission: Super-Agency Approach**

- In addition to oversight and coordination, CALFED entity also would have primary budgeting, planning and management responsibilities. Primary responsibility for meeting CALFED objectives would reside in the CALFED entity.
- Most or all funds would run through CALFED and either be spent by CALFED (for restoration) or disbursed by CALFED to existing agencies to carry out implementation tasks.
- Existing agencies would participate in planning and budgeting, but would not serve primarily to carry out CALFED tasks.

**EWC Response: The checks and balances approach is closer to current operations and funding, is less likely to generate agency conflict, resistance and/or confusion, is more likely to foster cooperation and success.** Aside from the continuing debate over the ecosystem program, most of the CALFED ROD necessarily will be implemented by existing agencies, with the bulk of responsibility residing in DWR. In addition to whatever funds are made available to the CALFED effort, considerable state and federal funding is already authorized and/or available to conduct closely related and on-going work. This funding will continue to be appropriated directly to the implementing agencies.

The remainder of this memorandum sets forth a proposal for legislation establishing a CALFED institutional structure based on a coordinating task force model and the elements for achieving on the ground results set forth in Putting It Back Together: Making Ecosystem Restoration Work (STB 2001).

## **A Legislative Approach for A CALFED Structure**

### **March 2002**

**SEC. 1: Short Title.** This Act shall be known as the California Bay-Delta Act

**SEC. 2: Findings.** The Legislature finds and declares all of the following

- The Bay-Delta Estuary and its watershed comprise a vast and unique ecological system as valuable to the nation as the Everglades, Chesapeake Bay, the Grand Canyon and other natural treasures.
- The health of the Bay-Delta is critical to the state and nation because it supplies drinking water for many Californians, irrigation water for a massive agricultural economy, and supports the state's commercial and sportfishing industries.
- Diversions of water for various consumptive uses over the last century have had a serious effect on water quality and on fish and wildlife resources in the Bay-Delta. Several salmon and other fish, wildlife and plant species have been given endangered species protections. Standards to protect water quality have become more stringent.
- Conflicts between natural resource protection and water supply present a serious problem at the local, state and national levels. To address this issue, the state and federal governments convened a process referred to as "CALFED" in which numerous agencies worked together and with stakeholders over a period of seven years to produce a long-term solution to the interlocking problems of water supply reliability, ecosystem restoration, water quality and Delta levee stability.
- The CALFED effort produced a programmatic Record of Decision and accompanying multi-volume Programmatic Environmental Impact Statement/Environmental Impact Report in August 2000.
- The Record of Decision identifies the mission of the CALFED Bay-Delta Program as the following: The mission of the CALFED Bay-Delta Program is to develop along-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the Bay-Delta system.
- The Record of Decision identifies four overarching objectives supporting this mission:
  - Provide good water quality for all beneficial uses
  - Improve and increase aquatic and terrestrial habitats and

- improve ecological functions in the Bay-Delta to support sustainable populations of diverse and valuable plant and animal species.
  - Reduce the mismatch between Bay-Delta water supplies and current and projected beneficial uses dependant upon the Bay-Delta system.
  - Reduce the risk to land use and associated economic activities, water supply, infrastructure and the ecosystem from catastrophic breaching of Delta levees.
- The Record of Decision indicates that these objectives will be achieved through nine program elements:
  - levee system integrity program element
  - water quality program element
  - ecosystem restoration program element
  - water storage program element
  - water conveyance program element
  - water transfer program element
  - water use efficiency program element
  - watershed program element
  - science program element
- The Record of Decision contains thousands of actions and numerous programs intended to be implemented over a period of thirty years or more. All aspects of the program are based on the concept of “adaptive management”, meaning that program actions and decisions are not fixed, but will need to evolve as information is developed and outstanding questions are answered.
- Most of the actions and programs contemplated by the Record of Decision are continuations, or expansions, of programs and actions that are already delegated to existing agencies under current state and federal laws. Examples include, water conservation programs, state and federal water project operations and management, endangered species protection, and water quality improvement.
- Implementation of a program of this size and scope requires a long-term institutional structure that will effectively integrate the actions of existing agencies with jurisdiction over most of the actions contemplated by the CALFED Record of Decision, and that will be able to keep the overall program on track over time.
- The purpose of this legislation is to establish an institutional structure for implementation of the CALFED Record of Decision that includes existing

agencies, new entities as required and limited in scope, and new mandates as needed to supplement current agency jurisdiction and direction in order to achieve the four objectives of the CALFED program.

### **SEC. 3: Definitions**

(1) CALFED BAY-DELTA PROGRAM. – The term “CALFED Bay-Delta Program” means the programs, projects, complementary actions, and activities undertaken through coordinated planning, implementation, and assessment activities of the state and federal agencies in a manner consistent with the Record of Decision.

(2) CALFED BAY-DELTA PROGRAM OBJECTIVES. -- The term "Bay-Delta Program Objectives" means the goals established in the Record of Decision for

1. Water Quality
2. Ecosystem Restoration
3. Water Supply Reliability
4. Levee Protection

(2) CALFED POLICY GROUP. – The term “CALFED Policy Group” means the committee of state and federal agencies established in the Record of Decision to oversee the CALFED Bay-Delta Program.

(3) CALFED TASK FORCE – The term “CALFED Task Force” means the federal-state task force established in Section 5 herein.

(4) ECOSYSTEM RESTORATION TRUST. – The term “ecosystem restoration trust” refers to the Bay-Delta Ecosystem Restoration Trust established in Section 7 herein.

(3) ENVIRONMENTAL WATER ACCOUNT. – The term “Environmental Water Account” means the reserve of water provided for in the ROD to provide water, in addition to the amount of the regulatory baseline, to protect and restore Delta fisheries.

(4) FEDERAL AGENCIES.– The term “federal agencies” means the following:

(A) The Department of the Interior (including the Bureau of Reclamation, Fish and Wildlife Service, Bureau of Land Management, and United States Geological Survey);

(B) The Environmental Protection Agency;

(C) The Army Corps of Engineers;

(D) The Department of Commerce (including the National Marine Fisheries Service);

(E) The Department of Agriculture (including the Natural Resources Conservation Service and the Forest Service); and

(F) The Western Area Power Administration.

(5) GOVERNOR. – The term “Governor” means the Governor of the State of California.



(6) IMPLEMENTATION MEMORANDUM. – The term “Implementation Memorandum” means the CALFED Implementation Memorandum of Understanding dated August 28, 2000, executed by the federal agencies and the state agencies.

() PROGRAM MANAGERS. – The term “Program Managers” means those existing or newly created entities with specific management responsibility for achieving the objectives of one or more of the CALFED Bay-Delta Program elements.

() PROGRAM SCHEDULE – The term “Program Schedule” means the annual schedule of projects and activities to accomplish the CALFED Program Objectives and meet the Performance Standards.

(7) RECORD OF DECISION.– The term “Record of Decision” means the federal programmatic ROD dated August 28, 2000, signed by the CALFED Policy Group.

(8) SECRETARY. – The term “Secretary” means the Secretary of the Interior.

(9) STAGE 1. – The term “Stage 1” means the programs and projects planned for the first 7 years of the CALFED Bay-Delta Program, as specified in the Record of Decision.

(10) STATE. – The term “State” means the State of California.

(11) STATE AGENCIES. – The term “state agencies” means the following:

(A) The Resources Agency of California (including the Department of Water Resources and the Department of Fish and Game and the Bay-Delta Ecosystem Restoration Trust established in Section 7 herein));

(B) The California Environmental Protection Agency (including the State Water Resources Control Board); and

(C) The California Department of Food and Agriculture.

#### **Sec. 4: CALFED Record of Decision Implementation Structure**

The Record of Decision shall be implemented by Program Managers which shall have primary responsibility for the nine CALFED Program elements. These entities will be overseen and coordinated by the CALFED Task Force established in Section 5 herein. The Program Managers will have primary responsibility for planning and budgeting needed to meet the performance standards associated with each of the CALFED Bay-Delta Program objectives. The CALFED Task Force is responsible for ensuring that these plans and budgets are fully integrated and coordinated programmatically and that progress toward the four program objectives is proceeding in a balanced and appropriate manner. Funding for CALFED program implementation shall be appropriated directly to the Program Managers. The CALFED Task Force shall have the authority to approve or disapprove the proposed action plans and budgets of the Program Managers in accordance with a specific set of criteria.

#### **SEC. 5: The CALFED Task Force**

**(a). Establishment.** There is created the CALFED Task Force. The Task Force shall consist of the following members (or, in the case of a state agency, a designee at the level of deputy secretary or an equivalent level);

- A. The Secretary of Resources, who shall serve as chairperson
- B. The Administrator of CalEPA
- C. The Director of the Department of Fish and Game
- D. The Director of the Department of Water Resources
- E. The Chair of the State Water Resources Control Board
- F. The Director of the Department of Food and Agriculture
- G. The Director of the Department of Health Services
- H. The Director of the Bay-Delta Ecosystem Restoration Trust, established in

Section 7 herein.

I. The following federal officials, or their designees shall be invited to participate in the Task Force

- The Secretary of the Interior, who shall be invited to serve as co-chair of the Task Force
- The Secretary of Agriculture
- The Administrator of the U.S. Environmental Protection Agency
- The Director of the Bureau of Reclamation
- The Director of the Fish and Wildlife Service
- The Director of the National Marine Fisheries Service
- The Director of the U.S. Geological Survey
- The Director of the Bureau of Land Management
- The Chief Engineer of the U.S. Army Corps of Engineers
- The Director of the Natural Resources Conservation Service
- The Forest Service
- The Western Area Power Administration

In the event that the federal government elects not to participate in the Task Force by [January 1, 2004], the Task Force shall cease to exist.

**(b) Purpose/Mission of the Task Force.** The Task Force's primary mission is to oversee and coordinate implementation of the four CALFED objectives ensuring parity of progress in these areas over time. The Commission will not have direct management responsibility for the CALFED Programs, but will serve as liaisons to the Program Managers.

**(c) Duties of the Task Force.** The Task Force –

- (1) shall oversee, and coordinate among the Program Managers, the entire implementation effort for the CALFED Record of Decision; it shall coordinate the development of consistent policies, strategies, plans, programs, projects,

activities, and priorities for addressing the four Bay-Delta Program objectives and the nine Bay-Delta Program elements;

(2) shall consult with and provide recommendations to the President and Governor regarding the progress of implementation of the CALFED Record of Decision;

(3) shall facilitate the exchange of information regarding programs, projects, and activities of the agencies and entities represented on the Task Force as needed to achieve the four CALFED Bay-Delta Program Objectives;

(4) shall establish a California-based working group which shall include representatives of all of the agencies and entities represented on the Task Force, as well as other governmental entities as appropriate for the purposes of implementing the Record of Decision and achieving the performance standards;

(5) is authorized and directed to resolve disputes that may arise from time to time among the Program Managers with regard to planning, budgeting, science or any other matter as set forth in Section 6 herein;

(6) shall provide assistance and support to the Program Managers in their planning and budgeting activities;

(7) shall, on an annual basis, assess progress toward the achievement of the performance standards and the four CALFED Program Objectives as provided for in Section 3(b) herein.

(8) shall make decisions on a consensus basis to the maximum extent feasible, and shall promulgate guidelines establishing a procedure for resolving disputes that may arise on the Task Force governing board, except that such guidelines shall include provision for facilitated dispute resolution.

**(d) Powers of the Task Force.** The Task Force shall have the following powers and authorities:

(1) It may sue or be sued.

(2) It may hire and fire staff as needed to accomplish its oversight and coordination functions.

(3) It may delegate functions to staff or committees.

(4) It may adopt regulations as needed for the implementation of this act.

(5) It may enter into contracts as needed to implement its duties under this act.

(5) It may request reports for state, federal or other governmental entities on issues related to implementation of the CALFED Record of Decision.

(6) It may receive funds for its staff and expenses from state and federal appropriations.

(7) It may enter into those contracts necessary to carry out its duties under this act.

(8) It shall, on an annual basis, report to the State Legislature, Congress, the Governor and the President regarding implementation of the CALFED Record of Decision and progress in reaching the CALFED Bay-Delta Program Objectives; this report shall contain an integrated financial plan showing where all public and other funds appropriated or otherwise provided toward implementation of all elements of the CALFED Record of Decision

#### **(e) Limitations on Task Force's Powers and Duties**

- The Task Force shall exercise its powers consistent with State law pertaining to water rights.
- The Task Force shall not have the authority to levy taxes or other assessments without express legislative approval.
- The Task Force shall exercise its powers consistent with CEQA.

### **Sec. 6: CALFED Program Management and Implementation**

#### **(a) Program Managers –**

State and federal agencies shall manage and implement the CALFED Bay-Delta Program. State responsibility for implementing the CALFED Record of Decision is assigned as follows:

(1) DWR, in consultation with the U.S. Army Corps, are the state Program Manager for the levee program element.

(2) The Department of Health Services and the State Water Resources Control Board, in consultation with the U.S. EPA, are the state Program Managers for the water quality program element.

(3) DWR, in consultation with the Bureau of Reclamation, is the state Program Manager for the water use efficiency element, the water storage element, and the water conveyance element.

(4) DWR and the State Water Resources Control Board, in consultation with the Bureau of Reclamation, are the state Program Managers for the water transfer element.

(5) DWR and the SWRCB, in consultation with the U.S. Natural Resources Conservation Service, are the state Program Managers for the watershed element.

(6) The Bay-Delta Ecosystem Restoration Trust, as established in Section 7 herein, in consultation with the California Department of Fish and Game, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service is the state Program Manager for the ecosystem restoration program element.

(7) The Task Force, in consultation with the U.S. Geological Survey, is the Program Manager for the science element.

(8) The Environmental Water Account shall be managed as set forth in the CALFED Record of Decision.

**(b) Responsibilities of Program Managers and the Task Force**

**(1) In General** – The Program Managers shall have primary responsibility for management of their assigned program elements. The Program Managers are authorized and directed to conduct such planning, prioritizing and budgeting as required to implement the Record of Decision and to achieve the performance standards established pursuant to Section 2 below. The Task Force shall have primary responsibility for ensuring that the Action Plans and Budgets prepared by the Program Managers are integrated and coordinated with one another, and that progress is being made in all Program areas toward achievement of the Program Objectives and Performance Standards.

**(2) Performance Standards** – The Program Managers, in coordination with the Task Force, are authorized and directed to immediately develop measurable Performance Standards for each of the four objectives of the CALFED Bay-Delta Program. These Performance Standards shall be employed by the Program Managers and the Task Force in their planning and program design, and in assessing progress toward the CALFED Program Objectives. The performance measures shall be reviewed and evaluated and, if appropriate revised, periodically but in no event less than every five years.

**(3) Review Guidelines** – The Program Managers and the Task Force, in consultation with the public advisory committee, are authorized and directed to immediately develop guidelines and criteria for conducting the annual review established in Section 6(c). The primary criterion for determining whether the program is proceeding in balance is the extent to which there has been progress in meeting the Performance Standards and the four CALFED Program Objectives. In no event shall the amount of funding serve as the

sole criterion for determining whether the program is in balance. Once adopted by the Task Force, these guidelines shall be binding upon the Task Force and Program Managers in conducting their annual balance assessment.

### **(3) Interagency Coordination for Annual Action Plans –**

- The Program Managers are authorized and directed to closely coordinate their planning, prioritizing and budgeting activities among themselves, and with the Task Force.
- The Program Managers and Task Force shall establish a Management Group that meets on a regular basis for this purpose.
- The Program Managers shall prepare Annual Action Plans designed to meet overall CALFED Program Objectives and the Performance Standards, established pursuant to Section 6(b)(2). Each of the Action Plans shall be reviewed by each of the Program Managers in order to maximize coordination and avoid conflicts.
- Program Managers shall review the Annual Action Plans prepared by each of the other Program Managers and shall provide comments and recommendations in three areas, if necessary:
  - Potential areas of conflict in proposed actions and projects between Programs.
  - Issues related to parity of progress in meeting overall Program Objectives and the Performance Standards; and
  - Opportunities for greater synergy or integration of program elements.

### **(4) Funding and Budgeting**

- **(A) In General** – Funding for management and implementation of the CALFED Record of Decision shall be provided directly to the Program Managers. The Annual Action Plans shall be accompanied by proposed annual budgets for their assigned Program Elements. These budgets shall be based on the Program Managers' best judgement with regard to the funding necessary to achieve the identified level of performance within the relevant budget cycle. These proposed budgets shall be reviewed by the other Program Managers and by the Task Force.
- **(B) Cross Cut Budgets** – Program Managers must produce

cross cut budgets clearly identifying all CALFED-related items in their budgets, as well as direct expenditures in support of the CALFED program. These items shall include funding for direct CALFED implementation, and for but all other programs and funding requests related to any CALFED Program element or any CALFED Program Objective.

### **(c) Task Force Review Authority**

**(1) Review of Annual Action Plans and Budgets** – Draft Annual Action Plans and budgets prepared by the Program Managers shall be reviewed by the Task Force. The Task Force's role in reviewing the Annual Action Plans and Budgets is to provide recommendations in three areas, if needed:

- Coordination of budget requests among Program Elements;
- Avoidance of (or resolution of potential) conflict in proposed actions and projects between Programs; and
- Ensuring parity of progress in meeting the CALFED Program Objectives and the Performance Standards.

**(2) Approval of Annual Action Plans and Budgets** – The Task Force shall approve the Annual Action Plans and budgets prepared by the Program Managers unless they fail to meet the following criteria;

- The programs and actions proposed in the Annual Action Plan are reasonably necessary in order to continue progress toward achievement of the performance standards and CALFED Program Objective for that program element;
- The funds requested are reasonably necessary to achieve the objectives and programs intended to be implemented within the time period at issue;
- The actions proposed present no unresolvable conflicts with actions proposed by other Program Managers.

If the Task Force finds that these three criteria have not been met, it shall provide specific written findings supporting its conclusions to the Program Manager. The Program Manager shall revise the Annual Action Plan and/or budget in accordance with the Task Force's findings, unless it disputes those findings. If the Program Manager disputes the findings of the Task Force, the matter shall be elevated to the Task Force's governing board. The Board's decision shall be binding on the Program Manager and shall be supported by substantial evidence in the record.

**(3) Scope of Budget Review** – The budget approval process set forth above covers direct as well as indirect CALFED expenditures. The Task Force is authorized to review budgets and programs of existing agencies that are

related to CALFED implementation even if they are not expressly designated as “CALFED implementation”. The Commission is further directed to employ this information in its annual assessment of the extent to which the overall program is proceeding “in balance.”

**(4) Conflicts Among Proposed Action Plans** – In the event that the Program Managers or the Task Force identify one or more potential conflicts among the draft Annual Action Plans, the Program Managers shall attempt to resolve such conflict expeditiously. In the event that such conflict cannot be resolved among the Program Managers, the Task Force is authorized and directed to convene an appropriate committee of neutral and expert parties to resolve the conflict within an appropriate time certain. If one or more of the Program Managers is unwilling to accept the resolution proposed by the committee, the matter shall be elevated to the Task Force’s governing Board. The decision of the board resolving the conflict in the annual action plans shall be binding on all Program Managers and shall be supported by substantial evidence in the record.

**(5) Budget Coordination** – In the event that the Task Force finds that the Program Managers’ proposed budgets represent a reasonable amount of funding needed to achieve the objectives and programs intended to be implemented within the time period at issue, but that such funds are unavailable, the Task Force shall work with all of the Program Managers to revise the annual action plans and budgets in a manner that provides the greatest progress toward meeting the performance standards under the circumstances.

**(6) Annual Assessment of Balanced Implementation** –

On or before December 15 of each year, the Task Force shall submit a report to the Governor, the California Legislature, the President and the U.S. Congress that describes the status of implementation of all elements of the CALFED Bay-Delta Program. This report shall be based on the annual planning and budget process set forth in subsections 1-4 above. The report shall include the Task Force’s recommendations as to (1) whether or not the Program Schedule has been substantially adhered to and (2) whether or not progress toward achievement of the four CALFED Program Objectives is proceeding in a balanced fashion. These conclusions shall be supported by substantial evidence in the record.

For purposes of this section, the phrase “proceeding in a balanced fashion” means proceeding such that the Performance Standards for each of the four CALFED Objectives are being achieved at a roughly equivalent pace.



If, at the conclusion of each annual review, or if a timely review has not been issued, the Governor or the Secretary of the Interior may review the program and reach a determination regarding whether or not the program schedule has been substantially adhered to. Any such finding must be supported by substantial evidence in the record.

If either the governor or the Secretary of the Interior makes a finding that the program schedule has not been substantially adhered to, the Governor and the Secretary, in coordination with the Task Force, will prepare a revised schedule that ensures achievement of the Performance Measures with regard to each of the four CALFED Program Objectives.

Upon determination that the prior schedule has not been substantially adhered to, State funds for the entire CALFED Program and related programs, if the determination was made by the Governor, and federal funds for the entire CALFED Program and related programs, if the determination was made by the Secretary of the Interior, will be available for expenditure in the subsequent fiscal year only if a revised schedule has been developed within six months from the date on which the determination of substantial non-adherence to the prior schedule was made. Upon submission of any revised schedule, funds will be expended in accordance with the revised schedule.

#### **(d) Task Force Staff**

- (1) The Task Force shall appoint a Director to administer the affairs of the Task Force as directed by the Task Force's governing board and shall direct the Task Force staff.
- (2) The Director may appoint and hire staff as necessary to administer the affairs of the Task Force.

#### **(e) Science Program**

**(1) Lead Scientist** – The Task Force in consultation with the Director shall appoint a Lead Scientist. The Lead Scientist shall be responsible for the development and implementation of the California Bay-Delta Science Program.

**(2) Purpose of the Science Program** – The science element is intended to carry out the following functions:

- Provide the Program Managers, and Task Force, with

authoritative and objective review of the state of scientific information to enable managers to adaptively manage the CALFED Bay-Delta Program;

- Develop strategies to articulate, test and refine understanding about the Bay-Delta Estuary and its greater watershed;
- Provide a comprehensive framework to integrate, monitor and evaluate program actions and their relative success.

**(3) Integration of the Science Program with the Program Elements** – The Lead Scientist shall assure scientific application of adaptive management principles, as well as monitoring and investigations with regard to each Program Element with the goal of attaining the CALFED Performance Standards and each of the four CALFED Program Objectives.

**(4) Peer Review** – The Lead Scientist shall be responsible for ensuring that peer review is employed as appropriate to assure quality of program planning and evaluation with regard to each of the Program Elements. The Lead Scientist shall further ensure that all major decisions are based on the best available scientific, technical and economic information.

**(f) Public Review –**

**(1) Establishment of the Advisory Committee** – The Task Force shall convene a public advisory committee. It may recognize an existing advisory committee as the advisory committee required by this section. The Task Force shall make every effort to ensure that the advisory committee is structured and appointed in compliance with the Federal Advisory Committee Act (P.L. 92-463). The Task Force shall ensure that the advisory committee is comprised of persons who represent a broad range of interests and perspectives regarding fulfillment of the CALFED Bay-Delta Program objectives.

**(2) Membership of the Advisory Committee** – The Advisory Committee should reflect geographic balance and a broad range of interests and perspectives including agricultural, urban, environmental, environmental justice, tribal, business, labor, sport and commercial fishing interests as well as representatives of local governments throughout the state. Good cause must be shown for rejecting any party interested in participating on the Advisory Committee in good faith. Program Managers may convene Advisory Committees focused more specifically on the individual programs.

**(2) Duties of the Advisory Committee** – The Advisory Committee shall review and make recommendations to the Task Force and Director on issues related to implementation of the CALFED Bay-Delta Program and establishment and achievement of Performance Measures, achievement of the Program Objectives, and annual progress reports. Any unanimous recommendation of the Advisory Committee shall be given great weight by the Task Force. Rejection of any unanimous decision or recommendation by the Task Force shall be in writing and shall be supported by substantial evidence in the record. Task Force recommendations that are not unanimous shall not be entitled to deference by the Task Force which must consider minority views as well as majority views before acting on a particular matter.

## **Section 7: Bay-Delta Ecosystem Restoration Trust**

**(a) Establishment.** There is created in the California Resources Agency the Bay-Delta Ecosystem Restoration Trust, hereinafter referred to as the Trust. The Trust shall serve as the Program Manager for the CALFED Ecosystem Restoration Program.

[ALTERNATIVELY: Responsibility for the Ecosystem Restoration Program could be delegated to an existing natural resources agency with appropriate expertise, such as the Department of Fish and Game, and the powers and authorities of that agency expanded as appropriate and necessary to implement the ERP.]

**(b) Duties and Powers of the Trust** – The Trust’s primary mission is to help establish and to achieve the performance standards set forth for the ecosystem restoration element of the CALFED ROD. In addition the Trust –

- shall report to the Task Force in the same manner as the other Program Managers;
- coordinate and interact with the other Program Managers as described in Section 6 above;
- shall be responsible for planning, prioritizing and budgeting for the ecosystem restoration program in accordance with the provisions of Section 6 above;
- will serve as the holder of any right to environmental water purchased or otherwise acquired for purposes of implementing the CALFED ecosystem restoration program;
- may sue or be sued;
- may delegate functions to committees or staff;
- may request reports and other information from federal, state or local governmental agencies;
- may receive funds, including funds from private and local governmental sources, contributions from public and private sources,

- as well as direct State and federal appropriations;
- may enter into contracts;
- may disburse funds through grants, public assistance, loans and contracts;
- may employ the services of other public, non-profit or private entities;
- may employ its own legal staff or contract with other state or federal agencies for legal services or both;
- may employ special, outside counsel with the approval of the state attorney general;
- may adopt regulations as needed for implementation of this act.

**(c) Limitations on Trust's Powers and Duties**

- The Trust shall exercise its powers consistent with State law pertaining to water rights.
- The Trust shall not have the authority to levy taxes or other assessments without express legislative approval.
- The Trust shall exercise its powers consistent with CEQA.

**(d) Trustees** – The Trust will be served by a 7 member Board of Trustees comprised of the following members:

- The Director of the California Department of Fish and Game, who shall serve as co-chair of the Board of Trustees.
- The Executive Director of the State Water Resources Control Board
- The Executive Director of the Bay Conservation and Development Commission
- The Regional Director of the U.S. Fish and Wildlife Service
- The Regional Director of the National Marine Fisheries Service
- The Regional Administrator of the U.S. Environmental Protection Agency
- A credentialed scientist affiliated with a university and having qualifications in biology, ecology, hydrology or other areas central to the goal of Bay-Delta ecosystem restoration, selected by the other six trustees.

The non-agency trustee shall receive compensation at [standard language regarding payment for political appointees to high level commissions].

**(d) Task Force Staff**

(1) The Trustees shall jointly shall appoint a Director to administer the affairs of the Trust, as directed by the Trustees. The Director shall direct the Task Force staff.

(2) The Director may appoint and hire staff as necessary to administer the affairs of the Task Force.

**(e) Funding.** The Trust Entity shall be provided a base level of funding in the amount of [open issue] for a 10-year period. The Trust may receive funds from annual appropriations and private sources as well.

**Sec. 7(a) No User Fees.** In any year that the Trust receives the full amount of base state and federal funding set forth above, no fees may be levied on agricultural or urban water users for the purposes of funding ERP Implementation.

## **SEC. 8. Achievement of CALFED Objectives**

**(a) MANDATE –** The Record of Decision is approved as a framework for implementing the CALFED Bay-Delta Program. The state agencies, working with the federal agencies, and the CALFED Task Force and the Bay-Delta Ecosystem Restoration Trust as herein established, are authorized and directed to undertake actions pursuant to the Record of Decision, subject to the provisions of this Act, so that the Performance Standards shall be achieved in a timely manner.

*[Open issue: One way of achieving accountability would be to set forth a more detailed schedule for the performance measures and mandating compliance. For example, require 5, 10, 15, 20 year performance targets and require reports demonstrating compliance. Failure to comply could result in legal action, elimination of administrative assurances, etc.]*